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COUNCIL 15, LOCAL 159, AFL-CIO

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

THE BOEING COMPANY,

Employer,

and

SOCIETY OF PROFESSIONAL  
ENGINEERING EMPLOYEES IN  
AEROSPACE, affiliated with  
INTERNATIONAL FEDERATION OF  
PROFESSIONAL & TECHNICAL  
ENGINEERS, LOCAL 2001,

Union.

INTERNATIONAL UNION OF PAINTERS  
AND ALLIED TRADES, DISTRICT COUNCIL  
15, LOCAL 159, AFL-CIO,

Intervenor.

No. 19-CA-090932; 19-CA-090948;  
19-CA-095926

**REPLY TO GENERAL COUNSEL'S  
OPPOSITION TO MOTION TO  
INTERVENE OF THE  
INTERNATIONAL UNION OF  
PAINTERS AND ALLIED TRADES,  
DISTRICT COUNCIL 15, LOCAL 159,  
AFL-CIO**

1. Proposed Intervenor is directly and immediately affected by the Board's Decision. The Board's Decision expressly overrules *Caesars Entertainment Corp.*, 362 NLRB No. 190 (2015). This alone gives it a sufficient interest in this proceeding.

2. As the Board is now aware, the Ninth Circuit has remanded most of *Caesars Entertainment* to the Board to reconsider in light of the Board's Decision in this case. That is all the more reason why intervention is necessary, because the outcome of *Caesars Entertainment* before the Board will depend upon whether the Board reviews or accepts the specific overruling of *Caesars Entertainment* by *Boeing* on remand.

3. Contrary to General Counsel, the Charging Party in *Caesars Entertainment* cannot raise the validity of the *Boeing* case in *Caesars Entertainment*. That's why it seeks intervention in this case to raise the validity of that case since it directly applies to *Caesars Entertainment*. We, of course, agree that if were not for this direct relationship, intervention would be far more questionable.

4. The General Counsel's opposition ignores the fact that the Charging Party has raised the question of whether the participation of Member Emanuel and former Chairman Miscimarra was improper. We have presented a detailed explanation why Chairman Miscimarra should not have participated since his former and now-again firm, Morgan, Lewis & Bockius represented Boeing before the Board and in other cases. Boeing was an important client of Morgan, Lewis & Bockius at the time Chairman Miscimarra took his position on the Board and remained a client while he was on the Board and continues to be a client of Morgan, Lewis & Bockius now that former Chairman Miscimarra has rejoined Morgan, Lewis & Bockius.

Member Emanuel's improper participation was stated in the initial Motion and we do not repeat it here.

5. This involves an unusual circumstance where the Board in the *Boeing* case expressly overruled *Caesars Entertainment*. Yet its overruling was done without giving the Charging Party, Painters District Council 15, Local 159, an opportunity to respond or object. Moreover, it was done in a circumstance where two members of the Board should not have participated in the Decision. None of these issues can be raised on remand in the *Caesars*

*Entertainment* case before the Board.

6. This is an unusual case. The standards of the Board's ethical conduct and the ethical conduct of its members are at issue. The Board should not duck it by simply deciding that the issue can't be raised. The public is entitled to a response and the *Boeing* case should be rescinded, just like the Board did in *Hy-Brand*, Case 25-CA-163189, et al. the public is entitled to a resolution of this issue.

7. For the reasons suggested above, the Intervention of Painters District Council 15, Local 159 should be granted and the Board should revoke its Decision in the *Boeing* case. Alternatively the Board should await the competition of the investigation of these matters by the Inspector General.

Dated: May 8, 2018

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ David A. Rosenfeld  
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## PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On May 8, 2018, I served the following documents in the manner described below:

### REPLY TO GENERAL COUNSEL'S OPPOSITION TO MOTION TO INTERVENE OF THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO

- ☒ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kkempler@unioncounsel.net](mailto:kkempler@unioncounsel.net) to the email addresses set forth below.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 8, 2018, at Alameda, California.

/s/ Karen Kempler  
Karen Kempler